



Legislative Bulletin.....October 30, 2007

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H.R. 3867—Small Business Contracting Program Improvements Act

Summary of the Bills Under Consideration Today:

Total Number of New Government Programs: 1

Total Cost of Discretionary Authorizations: \$15 million in FY 2008 and \$78 million over the FY 2008 – FY 2012 period.

Effect on Revenue: CBO estimates an “insignificant” increase from additional civil penalties.

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don’t Cite Specific Clauses of Constitutional Authority: 0

H.R. 3867—Small Business Contracting Program Improvements Act (Rep. Velazquez, D-NY)

Order of Business: H.R. 3867 is scheduled to be considered on Tuesday, October 30, 2007, subject to a structured rule ([H. Res. 773](#)) that allows for ten minutes of debate on ten amendments. The rule would waive all points of order against consideration of the bill—except those for PAYGO and earmarks—and would waive all points of order against the bill itself—except that for earmarks. The rule would make in order one motion to recommit (with or without instructions). A summary of the amendments made in order under the rule is forthcoming.

Summary: H.R. 3867 would modify multiple Small Business Administration (SBA) programs that assist certain small businesses in obtaining government contracts. In general, the legislation would: 1) create new opportunities for small business concerns owned by service-disabled veterans, 2) increase regulatory requirements on contract procurement by small businesses in economically depressed regions, and 3) increase accessibility to government contracts for businesses owned by “socially and economically disadvantaged” individuals. The specific provisions of the bill are as follows:

Title I — Ensuring Government Contract Opportunities for Small Business Concerns Owned and Controlled by Service-Disabled Veterans

- Requires that a government contracting officer give contracts to companies owned by service-disabled veterans without conducting competitive contracting regardless of the number of other companies competing for the contract.
- Removes a requirement that contract opportunities in HUB Zones be decided by competitive bidding when multiple small businesses seek the contract. This will allow service-disabled veterans in HUB Zones to receive sole source (i.e. no-bid) government contracts.
- Provides for civil penalties for any company that misrepresents as a service-disabled veteran owned business.
- Implements Executive Order 13360, dated October 20, 2004, which requires the SBA to provide service-disabled veteran owned companies with information, advise, assistance, and training regarding federal contract law, procedure, and practice.

Title II — Protecting Taxpayers and Ensuring Program Consistency

- Provides that no applicants for section 8(a) or HUB Zone programs may be approved until a background check is conducted and the SBA determines that the applicant “does not lack business integrity.” This section also requires the SBA to perform random checks on current business that have 8(a) or HUB Zone contracts.
- Requires the President to establish government-wide goals for procurement contracts awarded to small business concerns, service-disabled small business concerns, HUB Zone small business, and small businesses with socially disadvantaged owners.
- Increase the maximum amount of a contract that is awarded without competition from \$5 million to \$5.5 million for manufacturing contracts, and from \$3 million to \$5.1 million for all other contracts. Any contracts above this amount will be subject to competitive bidding.

Title III — Expanding Opportunities for Women Entrepreneurs

- Allows government contracting officers to restrict competition for government contracts for small businesses that are majority-owned by one or more economically disadvantaged women.
- Requires that a restricted-competition contract for a woman-owned business is in an industry that is historically under-represented by women. The bill requires that the SBA determine which industries are under-represented.
- Allows the SBA Administrator to waive the requirement that women receiving no-bid contracts be economically disadvantaged if the Administrator determines that the industry in question is sufficiently under-represented.
- Allows companies who would otherwise be able to compete for a contract to protest the eligibility of a company as woman-owned.

Title IV— Strengthening Community Development

- Requires the Administrator to conduct an on-site inspection of small businesses receiving their second HUB Zone government contract to determine if the business is qualified (this is meant to reduce waste and abuse in the program). This section also requires HUB Zone contract award winners to notify the SBA before receiving their second contract.
- Prohibits a small business from receiving a HUB Zone a construction contract if the project is not located within 150 miles of the business' principle location.
- Allows any small business to challenge the eligibility of a HUB Zone small business that is awarded a contract.

Title V — Modernizing the 8(a) Program

- Stipulates that an individual determined to be economically disadvantaged at the time they procure a contract will be considered economically disadvantaged for the entire term of the contract, regardless of other circumstances.
- **Increases the maximum net worth, excluding home and business equity, of an individual considered to be “economically disadvantaged” and able to receive no-bid government contracts under the 8(a) program from \$250,000 to \$550,000.**
- Extends the amount of time a small business may spend in the 8(a) program from nine years to ten. This means that small business owner's economically disadvantaged status would only be reviewed every ten years.

Additional Background: The SBA’s HUB Zone and 8(a) programs support the efforts of certain small businesses to obtain government contracts. HUB Zone gives assistance to small businesses in designated “distressed” geographic areas, while 8(a) assists small businesses with socially and economically “disadvantaged” owners (such as minorities and women). Both programs use procurement of federal government contracts as their main tool to assist small businesses. Small businesses in HUB Zones can receive no-bid government contracts if the Administrator reasonably determines that no other small business in the same HUB Zone will seek the same contract. If there are two similar small businesses in the same HUB Zone, the SBA will conduct competitive bidding.

Section 8(a) programs define a small business as owned by a disadvantaged individual if the business is at least 51% owned by an ethnic group member or other individuals who can show that they have been subject to business discrimination. An individual is currently considered to be “economically disadvantaged” if their net worth, minus home and business equity, is below \$250,000 (H.R. 3867 would raise the bar to \$550,000).

SBA’s section 8(a) programs have been criticized recently because a very small number of eligible small businesses receive a large majority of the government contracts through the program. In its FY 2007 [*Report on the Most Serious Management Challenges Facing the Small Business Administration*](#), the Office of Inspector General for the SBA rated modifying section 8(a) programs among the ten biggest challenges facing the administration. According to the report, “SBA has not placed adequate emphasis on business development to enhance 8(a) firms’ ability to compete, and does not adequately ensure that only 8(a) firms with economically disadvantaged owners in need of business development remain in the program.” The report goes on to show that 50% of contracts awarded through section 8(a) programs have gone to 1.7% of all firms in the program. In addition, section 8(a) has been criticized for allowing small business to circumvent competitive bidding and gain an unfair contracting edge.

In 2004, a [Washington Post article](#) examined Chenega Technology Services Corp., a small Native Alaskan corporation (ANC) that has won numerous no-bid government contracts since Native Alaskan businesses were made eligible for special treatment through section 8(a) in 1992. According to the article, Chenega used its ability to get no-bid contracts to obtain billions of dollars in government deals, which Chenega then subcontracted to private companies. Private businesses were prepared to go through a competitive bidding process to obtain the contracts, but agencies generally prefer to forego the time-consuming procedure of competitive bidding. A 2006 GAO report on the matter recommended that SBA tailor policies toward ANC firms in the section 8(a) program to guarantee that such awards do not result in other small businesses losing contract opportunities. However, H.R. 3867 does not address this concern.

While H.R. 3867 does not address concerns raised about the section 8(a) programs, it adds additional regulatory requirements to the HUB Zone program. The bill prohibits HUB Zone firms from obtaining contracts more than 150 miles from their principle office and requires on-site evaluations of all HUB Zone businesses before a second contract can

be awarded. According to a [Statement of Administration Policy \(SAP\)](#) released by the Whitehouse, these provisions would “create a large burden on the Small Business Administration, as these firms are widely distributed and often located in rural areas. The firms are already required to certify their status prior to award of a contract.” The administration disagrees with the added requirements on the HUB Zone program.

Possible Conservative Concerns: Some conservatives may be concerned that H.R. 3867 increases the eligibility requirements for economic disadvantaged participants in section 8(a) programs from \$250,000 to \$550,000, excluding home and business equity. Conservatives may also be concerned that H.R. 3867 extends the amount of time a small business may spend in the 8(a) program without economic review to ten years. This provision would potentially allow an individual or firm to obtain government contracting services and no-bid federal contracts for a decade, regardless of their wealth or income. Conservatives may be concerned that these provisions would further reroute section 8(a) opportunities from truly economically challenged small businesses, which is the original intent of the program.

Furthermore, some conservatives may be concerned that H.R. 3867 would place significant and additional requirements on HUB Zone contracting programs, which do not grant awards based on ethnic or gender preference.

Finally, conservatives may be concerned that H.R. 3867 could supplant competition and could expand non-competitive bidding to businesses that were not originally intended to benefit from these programs. According to the [SAP](#), “H.R. 3867 would also increase dollar thresholds for setting-aside non-competitive contracts in several of these programs. Competition is a proven way of obtaining the best performance and value for the government. Accordingly, any non-competitive thresholds increase should be based on the actual rate of inflation as reflected in regulatory changes instituted by the SBA.”

RSC Bonus Fact: If H.R. 3867 were to be adopted by the House, it would be the 11th SBA expansion or extension passed by the House in the 110th Congress.

Committee Action: H.R. 3867 was introduced on October 17, 2007, and referred to the Committee on Small Business, which held a mark-up the following day and reported the bill by a roll call vote of 21 – 4.

Administration Position: According to the [Statement of Administration Policy \(SAP\)](#), issued on October 23, 2007, the Administration “strongly opposes” the modifications to small business contract procurement.

Cost to Taxpayers: According to CBO, H.R. 3867 would authorize \$15 million in FY 2008 and \$78 million over the FY 2008 – FY 2012 period, subject to appropriation. CBO estimates that H.R. 3867 would result in outlays of \$72 million through FY 2012.

Does the Bill Expand the Size and Scope of the Federal Government? Yes, the bill expands eligibility for federal contracting assistance to include small businesses

controlled by individuals with a net worth of \$550,000 (increased from \$250,000). The bill would impose new regulatory requirements on small businesses that receive contracting assistance. Finally, the bill would expand the level of federal contracting assistance for small businesses owned by service-disabled veterans.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates? No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits? The Small Business Committee, in [House Report 110-400](#), asserts that, “H.R. 3867 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.”

Constitutional Authority: The Small Business Committee, in [House Report 110-400](#), cites constitutional authority in Article I, Section 8, Clause 18 (the necessary and proper clause).

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